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TAGS: PHUM PGOV PREL BL

SUBJECT: BOLIVIA'S JUDICIAL IMPASSE: RECESS APPOINTMENTS?

Classified By: Acting EcoPol Chief Brian Quigley  
for reasons 1.4 (b) and (d).

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Summary  
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¶1. (C) A leading opposition senator accused the ruling Movement Toward Socialism (MAS) party of purposefully blocking Congressional debate over judicial nominations so that President Evo Morales can issue interim appointments during Congress' upcoming recess. MAS Congressional representatives vehemently deny the accusations. There are currently seven vacancies -- two "titulares" (primary) and five "suplente" alternate magistrates -- on the Constitutional Tribunal, one in the Supreme Court, two on the National Electoral Court (CNE) and the Prosecutor General of the Republic (the equivalent of the U.S. Attorney General). Interim appointments that threaten the independence of the Constitutional Tribunal are the most problematic, as it is the body that has the power to rule against (check) any extra-constitutional measures the government may attempt to impose. End Summary.

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MAS Running Out the Congressional Clock  
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¶2. (SBU) Opposition senator Luis Vasquez Villamar (PODEMOS, La Paz) who serves as President of the Congressional Constitutional Commission announced on November 19 that the MAS is following a strategy to avoid a quorum in his commission. Without a quorum, the commission cannot meet and send forward to the full Congress a list of recommended judicial appointments. According to news reports, a significant number of MAS congressional representatives have failed to attend four separate November commission meetings, where the nomination of new judicial appointments was supposed to be debated. With the Congressional recess only a few weeks away, most in the opposition are convinced the MAS is simply playing a waiting game arguing President Evo Morales will almost certainly exercise his constitutional authority to make appoint interim appointments during the

recess. Vasquez iterated the opposition's thoughts, "The only explanation I can see at this time is that MAS wants to postpone the nomination of these authorities . . . so that (the President) can, in this time (Congress' recess), designate (justices) by decree."

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Constitutional Tribunal Overwhelmed  
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¶3. (C) With the October 26 resignation announcements of two of five Constitutional Tribunal magistrates the court's remaining three justices have not been able to keep up with caseloads. Furthermore, as one of magistrates has been ill, the court lacked the minimum quorum of three justices to rule on any cases for the past few weeks. With three magistrates, the justices must reach unanimous decisions for their rulings to be legal (constitutional). Minority (or dissenting) opinions are no longer an option. If the court does not start ruling on cases soon, the magistrates could face legal charges of "not fulfilling their constitutional obligations."

Emboff spoke to one of the three remain magistrates on November 20. The magistrate expressed that the court feels under siege, but mentioned that the three would begin ruling on cases once again December 3. The magistrate shares Senator Vasquez's assessment that the MAS has a concerted strategy of blocking the election of new magistrates. If President Morales designates interim magistrates, Emboff's contact stated that the current three magistrates will resign from the court.

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Comment  
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¶4. (C) Senator Vasquez's warnings are likely more than the declarations of a frustrated opposition. The judiciary is the one branch of government in which President Morales and the MAS have minimal sway. Filling judicial vacancies is Congress' role under the Bolivian constitution. The president has the constitutional authority to make interim appointments, if there is a need and Congress is in recess. MAS congress members appear comfortable turning over their authority over to the president, if it means that the MAS gains greater control over the judiciary than it could via parliamentary deliberation. With more control over the judiciary, President Morales' occasional threats to rule by decree could become more than just rhetoric. End Comment.

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